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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

Application by BellSouth

Corporation et al. for Provision of

In-Region, InterLATA Services in

South Carolina

CC Docket No. 97-208

RESPONSE OF KMC TELECOM INC. TO BELLSOUTH'S MOTION TO STRIKE

BellSouth seeks to strike the portion of the reply comments of KMC Telecom Inc. ("KMC") which addressed an issue generated by the Eighth Circuit's decision of October 14, 1997. That decision conferred on incumbent LECs the right to disconnect combined network elements before providing them to requesting carriers. The issue KMC addressed was "the problems which would arise if BellSouth were to require the collocation procedure in its present form as a precondition to the temporary access CLEC technicians would need to reconnect disconnected network elements." KMC Reply Comments at 6.

The Eighth Circuit decision was issued only six days before October 20, 1997, when the initial comments in this case were due. Aside from a single paragraph in the AT&T initial comments (at pp. 22-23), the issue of whether collocation was the proper procedure for affording CLEC technicians the access they would need to combine disconnected elements was first discussed in the DOJ Comments filed November 4, 1997. The DOJ Comments noted a "lack of clarity" in BellSouth's description of how it would make disconnected elements available in a manner that would allow them to be recombined. DOJ Comments at 21-22. (Two days later, in its Louisiana application, BellSouth made it clear that it regarded collocation as the only lawful procedure for CLECs to gain the access needed to combine disconnected elements. BellSouth

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Brief at 48.) DOJ went on to note that in some cases BellSouth appeared to be offering collocation rather than supervised access, and that DOJ thought that requiring collocation "might unnecessarily add costs." DOJ Comments Comments at 22 and n. 32.

The DOJ Comments (as well as the brief discussion in the AT&T initial comments) clearly called for additional response. BellSouth itself realized that, by including in its Reply Brief an argument that collocation was practical (pp. 32-34) and legally required (pp. 34-35). KMC's response was to argue that collocation was not legally required (KMC Reply Comments at 3-6) and not practical (pp. 6-8). BellSouth apparently has no objection to KMC's legal argument, but has moved to strike KMC's argument on practicality because it was based on the Walker Affidavit discussing the background technical facts. But the Commission's prohibition against "new" facts is addressed to "new factual evidence post-dating the filing of comments." Ameritech Michigan Order at ¶ 51. The Walker affidavit discusses the background technical facts; these are not facts "post-dating the filing of comments." Moreover, to say that a legal argument is admissible, but not a description of technical facts which provide a background to the legal problem, can only foster a sterile decision-making process based on legal concepts rather than practical reality.

In any event, KMC's initial comments in the Louisiana proceeding set forth in full the arguments it made in its South Carolina Reply Comments on the practicality of collocation, and attach a copy of the Walker Affidavit. KMC Louisiana Comments (filed November 25, 1997) at 9-10 and Attachment 2. The Louisiana and South Carolina proceedings are pending at the same time, involve the same RBOC, and at least with respect to this issue must be decided the same way since there are no facts relevant to this issue that differ as between the two States. BellSouth will have ample opportunity in its reply comments in the Louisiana case to respond,

before the Commission renders its final decision in Louisiana. In these unique circumstances, the Commission can hardly ignore in the South Carolina case evidence that is properly before it in the Louisiana case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Russell M. Blau", written over a horizontal line.

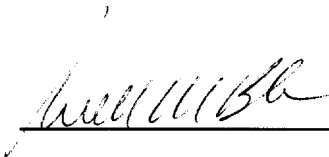
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Dated: December 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RESPONSE OF KMC TELECOM INC. TO BELLSOUTH'S MOTION TO STRIKE were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk (*)), or by First Class Mail, postage prepaid, this 10th day of December 1997.



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